

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 74-1190 ORIGINAL

In The  
**United States Court of Appeals**  
For The Second Circuit

UNITED STATES OF AMERICA,

*Appellee,*

vs.

IP KEI WAI,

*Appellant.*

*On Appeal from the United States District Court for  
the Eastern District of New York*

## APPELLANT'S APPENDIX



IRWIN ROCHMAN  
*Attorney for Appellant*  
230 Park Avenue  
New York, New York 10017  
(212) 685-6488

(7027)

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## DOCKET ENTRIES

1a

73 CR 750

TRAVIA, J

CRIMINAL DOCKET

## TITLE OF CASE

## ATTORNEYS

THE UNITED STATES

vs.

X HO CHEUNG SING

X SENG KAR WONG

X IP KEI WAI

For U.S.: Woodfield

SING: D. Weistand

225 Broadway, N.Y.C.  
962-3650

For: WONG: A. Jacobs

80 Mott St. (925)-36

For Defendant: All Defts

Irwin Rochman

230 Park Ave. N.Y. N.Y. 1

685-6488

Did import into the U.S. heroin

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		1-30-74	Notice of Appeal		
Clerk,		1-31-74	Paul L. Thomas		
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
8/9/73	Before, DOOLING, J.- Indictment filed
8/17/73	Before DOOLING, J.- Case called- Deft Wai and counsel Albert Jackson present- Defts Sing and Wong present without counsel- Laura Ho sworn in as interpreter- Deft Wai arraigned and enters a plea of not guilty- Deft. Wai moves for a reduction in bail- Motion denied Defts Sing and Wong to obtain counsel- Defts contd in custody in lieu of bail.
8/20/73	Notice of appearance filed (ALL DEFTS)
8/22/73	Notice of Appearances filed.
8/23/73	Before DOOLING, J.- Case called- Deft Sing pleads not guilty to each of the 3 counts-Deft WONG pleads not guilty to the indictment also- Deft WAI's motion for reduction of bail denied-Bail cont'd in amount previously set.

DATE	PROCEEDINGS
8/27/73	Notice of Readiness for Trial filed.
9-5-73	Notice of Motion filed for Bill of Particulars, Inspection, etc. (ret. 9-21-73 deft Ho Cheung Sing)
9/19/73	Magistrates file T3M1151 inserted into Criminal file 73CR750
9-21-73	Before Travia J - Case called - Oral motion for reduction of bail of defts HO CHEUNG SING & IP KEI WAI and SENG KAR WONG - bail reduced to \$50,000 surety bond for HO CHEUNG SING & SENG KAR WONG - Bail reduced to \$75,000 - 10% cash plus personal bond and signature of father to guarantee remainder of bond - motion for Bill of Particulars held in abeyance.
9-21-73	By SCHIFFMAN, Magistrate - Order for acceptance of cash bail filed. IP KEI WAI
11-5-73	Before Travia J - Case called - defts & counsels present - respectfully referred to Judge Coffrin for Trial.
11-5-73	Before COFFRIN J - Case called - answered ready - trial begun - Motion denied on suppression - trial to be resumed on Nov. 6, 1973.
11-6-73	Before COFFRIN J - Case called - defts & attys present - trial resumed - Jury drawn and sworn - Suppression hearing reopened at the request of the Govt-Grand Jury Minutes dated Aug. 9, 1973 marked Court Ex.#1 and court directed the Clerk that it be sealed - trial to be resumed on Nov. 7, 1973 @ 9:30 am.
11-7-73	Before COFFRIN, J - Case called - defts & counsels present - trial resumed - Hearing to suppress all of the evidence held & concluded - Court denied motions to suppress - all 3 attys move for withdrawal of a Juror and Mistrial - court denied all applications - Trial to be continued on Nov. 8, 1973 at 9:30 am.
11-8-73	Before COFFRIN, J. - Case called - Defts and counsel present - Trial resumed - Suppression hearing held - Hearing held and concluded (in the miranda heard) Court denies the introduction of Deft Ho's statement - Defts move to dismiss Indictment - deft Ip in addition moves for Judgment of Acquittal on grounds that govt failed to make prima facie case - Court denies all motions - Trial contd to 11-9-73
11-9-73	Before COFFRIN J - Case called - defts & attys present - Trial resumed - Interpreter Chin Lung present - all defts renew applications for Judgment of Acquittal - court Denied the motions - 2 motions for deft IP during summation By Asst Woodfield, for withdrawal of a Juror and for a Mistrial Denied - Order of Sustenance signed (Lunch) Trial contd on Nov. 10, 1973
11-10-73	Before COFFRIN J - Case called - defts & attys present - Trial resumed -



DATE	PROCEEDINGS
	Jury resumes its deliberations at 9:30 am . Jury returns and renders a verdict of guilty on count 3 and not guilty on counts 1 and 2 as to deft HO; defts WANG & IP guilty on counts 1, 2 & 3; sentences adjd without date - Jury polled - Jury discharged Bail as to all 3 defts vacated - all motions are reserved until time of sentence; all defts remanded - Trial concluded -
11-9-73	By COFFRIN J - Order of sustenance filed .
11-12-73	Grand Jury Minutes placed in vault. (sealed by Judge Coffrin)
11-13-73	4 stenographers transcripts filed (pgs 1 to 540)
11-16-73	Before COFFRIN, J. - Case called - Deft and counsel present - Motion for and granted - Bail fixed at \$75,000.00 P.R. Bond - \$7,500.00 now in the registry will go towards the 75,000.00 P.R. Bond - Deft IP KEI WAI is limited to the E.D.N.Y. and N.Y.C. - All documents of traveling; thro must be turned over to the Govt - Deft to call or appear in person to probation once a week
11-16-73	Voucher for expert services filed (SING)
11-21-73	Stenographers Transcript dated 11-9-73 and 11-10-73 filed
1-23-74	Before COFFRIN J - case called - defts present with counsels - deft <u>SING HO CHEUNG</u> sentenced to be imprisoned for 3 years on count 3 pursuant to 18:4208(a)(2) also special parole of 10 years on count 3 <del>to run concurrently with the sentence</del> Motion to set aside Jury Verdict was denied by the court. Deft IP KEI WAI & counsel Irwin Rochman present - Interpreter Laura Ho present and sworn for all defts - Motion by counsel was made to set aside the Jury verdict - Motion denied - deft is sentenced to imprisonment for 6 years on each of counts 1, 2 & 3 pursuant to 18:4208(a)(2) <del>sentence to run concurrently - also special parole of 10 years on each of counts 1, 2 &amp; 3 to run concurrently - special parole to run concurrently with the sentence</del> - notice of appeal to be filed by counsel - an application to release the deft on bail was denied by the court - deft remanded. Deft <u>SENG KA WONG</u> - motion to set aside jury verdict is denied - deft is sentenced to imprisonment for 3 years on each of counts 1, 2 & 3 pursuant to 18:4208(a)(2) to run concurrently and special parole for 10 years on each of counts 1, 2 & 3 - to run concurrently - <del>special parole to run concurrently with the sentence</del>
1-23-74	Judgment & Commitment filed for 3 defts - certified copies to NY

## 4a

[illegible]



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

73 CR 750

- - - - - X

UNITED STATES OF AMERICA

INDICTMENT

-against-

HO CHEUNG SING,  
SENG KAR WONG,  
IP KEI WAI,

Cr. No.  
T.21, U.S.C., §841(a)(1); §846;  
§952(a); §960(a)(1) and §963;  
T.18, U.S.C., §2

Defendants.

- - - - - X

AUG 9 1973

THE GRAND JURY CHARGES:

TRAVIA, J.

COUNT ONE

On or about the 31st day of July 1973, within the Eastern District of New York, the defendant HO CHEUNG SING, the defendant SENG KAR WONG and the defendant IP KEI WAI did knowingly and intentionally import into the United States from a place outside thereof approximately four pounds of heroin, a Schedule I narcotic drug controlled substance.

(Title 21, United States Code, §952(a) and §960(a)(1).)  
(Title 18, United States Code, §2.)

COUNT TWO

On or about the 3rd day of August 1973, within the Eastern District of New York, the defendant HO CHEUNG SING, the defendant SENG KAR WONG and the defendant IP KEI WAI did knowingly and intentionally possess with intent to distribute approximately four pounds of heroin, a Schedule I narcotic drug controlled substance.

(Title 21, United States Code, §841(a)(1).)  
(Title 18, United States Code, §2.)

COUNT THREE

On or about and between the 1st day of July 1973, and the 3rd day of August 1973, both dates being approximate and inclusive, the defendant HO CHEUNG SING, the defendant SENG KAR WONG and the

Indictment

6a

defendant IP KEI WAI, did knowingly and intentionally conspire to commit offenses against the United States in violation of Sections 841(a)(1) and 952(a) of Title 21, United States Code by conspiring to knowingly and intentionally import into the United States from a point outside thereof and to possess with intent to distribute a quantity of heroin, a Schedule I narcotic drug controlled substance.

(Title 21, United States Code, §846 and §963.)

A TRUE BILL

---

Foreman

---

UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



1. ~~Direct~~ Knowing Spectator

Merely presence at the scene  
of a crime, mere knowledge  
that a crime is being committed,  
merely associating with persons  
who are committing a crime, is  
~~not enough to prove~~  
~~to justify, in and of itself~~  
not itself a crime and is  
not, in and of itself sufficient  
evidence to satisfy you  
beyond a reasonable doubt  
as to a defendants guilt  
either as an aider and abettor  
under count one or two,  
or as a conspirator under count  
three.

United States v. Garguilo,

310 F.2d 249, 253 (2d Cir. 1962)



30. Knowing Possession

~~Actual knowledge that the~~

~~Under~~ Under the facts of this case, an essential element of each of the three counts charged in this indictment is that the defendants knew, had actual knowledge, that ~~the package~~ there was heroin in the desk sets and globes contained in the package which is Government Exhibit D, and, as I have previously instructed you, the prosecution must prove this element, like every single other element of the crimes charged, beyond a reasonable doubt.

~~Conduct~~

It is not ~~sufficient~~ <sup>sufficient</sup> that the defendants might have known, or should have known, or you suspect that they knew that there was heroin in that package; you must be satisfied beyond a reasonable doubt that each individual defendant actually knew there



2. Knowing Possession - 2nd of page

was, heroin in the package,  
and if you are not so satisfied  
beyond a reasonable doubt,  
with respect to any or all of the defendants,  
then you must acquit  
that defendant or all the  
defendants of each of the three  
counts in this indictment.

United States v. Moler,

460 F. 2d 1273 (9th Cir. 1972)

Sevill & Blackmer, Federal Jury Instructions,  
Section 16.09

Even though a person or  
persons may have possession of  
a package, you may not  
infer or conclude from the  
simple fact of such possession  
that such person or persons  
knew ~~that~~ the package  
~~contained heroin~~ contents of  
the parcel. If the prosecution's  
evidence <sup>merely</sup> ~~satisfies you only~~  
<sup>beyond a reasonable doubt</sup> ~~proves~~ that the defendants had  
possession of government O, the package,  
you may not infer from <sup>the simple fact of</sup> that  
possession that any defendant  
knew there was heroin hidden  
in the package, and you must  
therefore acquit the defendants of  
each of the three counts charged.

2.

page 3

If the evidence in this case leaves you with a reasonable doubt as to whether the defendants actually knew there was heroin in the package, then you ~~it~~ must acquit the defendants of all the counts charged in this indictment.



3. ~~Knowingly and Intentionally~~

~~Intentionally Importing~~

caunt. ~~By~~ The essential element of this which the prosecution must prove beyond a reasonable doubt is that each defendant imported ~~(brought into the country or~~ caused to be imported the heroin which was found in government's exhibit ①.

Even though a person may have possession of heroin ~~in~~ in whatever quantity, which is of foreign origin, this is not sufficient in and of itself to prove this essential element.

~~If you are not satisfied that the prosecution has proven~~

~~If, after reviewing the evidence, you ~~are~~ find that all that the prosecution has proven~~

As I have previously told you may not infer from the simple fact of possession of a package that the possessor knew its contents.

Even if you are satisfied from other evidence aside from simple possession of the package that the defendants knew that

Knowingly and Intentionally

~~Planning~~ - Cont.

Page 2 of 2 pages

The package contained heroin,  
 you ~~may not~~ must argue  
 The defendants under each  
 one if that is all the proof  
 was proven beyond a  
 reasonable doubt with respect to  
 each one.

There must be evidence  
 proving beyond a reasonable  
 doubt that the defendants  
 knowingly and intentionally  
 imported the package, or  
 caused it to be imported,  
 knowing it <sup>would</sup> contain heroin.

IP

There receiving of a package,  
 merely picking up a package  
 which ~~has~~ is addressed to you,  
 or helping someone pick up  
 a package which is addressed  
 to them, <sup>is</sup> ~~not~~ not in and of  
 itself <sup>any evidence</sup> ~~established beyond a~~  
~~reasonable doubt~~ that such  
 receiver or helper knowingly  
 and intentionally <sup>imported or</sup> caused to  
 be imported <sup>any</sup> ~~a~~ package  
 or ~~one of those~~ containing  
 any thing, nor, of course, is it  
 proof of any evidence that

it's being  
 put in a  
 package  
 is your  
 case,



3.

page 3

or person taking  
package home

receiver or helper, knew the  
contents of the package.

United States v. How Wan Lee,

264 F. Supp. 804 (1967) Southern District, N.Y.

4. Lack of surreptitious behavior

4. ~~If you~~

*you find that*

To the extent that the ~~activities of the~~ defendants made no attempt to hide their identities or activities, as might be expected were they aware that the package contained heroin, ~~you may~~ <sup>would be</sup> ~~consider~~ this ~~as~~ evidence ~~tending~~ to supplement in and of itself to raise a reasonable doubt ~~in~~ in your minds that the defendant actually knew the package contained heroin, and you ~~the~~ must therefore, if you so find, acquit the defendants of all the counts charged.

United States v. Infantino and KURTZ  
September Term, 1972

Docket NOS. 72-2086, 72-2087



5. Defendants have no obligation  
to explain possession of the  
package.

the facts of this case,  
Under ~~no~~ circumstances  
is ~~any~~ <sup>no</sup> defendant <sup>is</sup> under any  
obligation to explain any thing  
~~in a criminal case~~

No defendant is under any  
obligation to explain his  
possession of the package in  
question. It is the obligation  
of the government to prove  
beyond a reasonable doubt  
that each defendant knew  
that the package contained  
herein.

The Government asks you to draw one set of inferences while the defendant asks you to draw another. It is for you alone to decide what inferences you will draw from the evidence and what facts you find to have been proven. An inference is a deduction or conclusion which reason and common sense leads the jury to draw from facts which have been proved.

But in this connection, you must remember that if two sets of inferences may be reasonably be drawn from the evidence, one consistent with innocence and the other with guilt, then you must not convict, because as I have explained, the Government must prove each and every element beyond a reasonable doubt.

Now, certain testimony in this case was received with respect to particular defendants only.

You will recall instances, many instances, where the evidence was admitted only with respect to one defendant or with respect to another defendant, or with respect to several defendants, you were informed that it was offered only with respect to such defendant or defendants, and not against any other defendant. You are instructed to consider such testimony only with respect to the defendant as to whom it was received, and not against any other defendant.



\* \* \*

## CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury, I understand the procedure in this jurisdiction is that your Juror No. 1 becomes the foreman of the jury, so that Mr. Tyler, you are the foreman of this particular jury.

This case is a criminal prosecution brought by the United States against the defendants Ho Cheung Sing, Seng Kar Wong, and Ip Kei Wai. The grand jury indictment charges the defendants in three counts as follows:

Count 1 charges that on or about the 31st day of July, 1973, within the Eastern District of New York, the defendant Ho Cheung Sing, the defendant Seng Kar Wong, and the defendant Ip Kei Wai did knowingly and intentionally import into the United States, from a place outside thereof, approximately four pounds of heroin, a Schedule 1 narcotic drug controlled substance.

I am going to stop at this point. Is that date correct from the indictment? I don't have it in front of me.

MR. WOODFIELD: Here is my copy, your Honor.

THE COURT: Thank you.

Yes, ladies and gentlemen, that is the correct date. You will bear in mind that it says "on or about."

Count 2 charges that on or about the 3rd day of August, 1973, within the Eastern District of New York, the defendant Ho Cheung Sing, the defendant Seng Kar Wong, and the defendant Ip Kei Wai did knowingly and intentionally possess, with intent to distribute, approximately four pounds of heroin, a Schedule 1 narcotic drug controlled substance.

Count 3 charges that on or about and between the 1st day of July, 1973, and the 3rd day of August, 1973, both dates being approximate and inclusive, the defendant Ho Cheung Sing, the defendant Seng Kar Wong, and the defendant Ip Kai Wai did knowingly and intentionally conspire to commit offenses against the United States, in violation of Section 848(a)1 and 952(a) of Title 21, United States Code, by conspiring to knowingly and intentionally import



1  
2 into the United States, from a point outside  
3 thereof, and to possess with intent to dis-  
4 tribute, a quantity of heroin, a Schedule I  
5 narcotic drug controlled substance, in violation  
6 of Title 21, United States Code Section 846  
7 and 963.

8 Your verdict should not be influenced  
9 by the fact that the defendants in this matter  
10 were indicted for this offense or these  
11 offenses by this grand jury. An indictment  
12 is merely a formal procedural method of accus-  
13 ing a defendant or defendants of a crime pre-  
14 liminary to trial.

15 An investigation by a grand jury is  
16 one-sided in the government's favor. The  
17 government presents the grand jury all the  
18 evidence favorable to the government in order  
19 to return an indictment, and the defendant  
20 has no opportunity to present evidence favor-  
21 able to him. Therefore, the indictment is  
22 not evidence of any kind against the defendants.  
23 It does not create an presumption or permit  
24 any inference of the defendants' guilt. The  
25 defendants have pleaded not guilty to the

charges contained in this indictment.

You have been chosen and sworn as jurors in this case to determine the issues of fact presented by the allegations of the indictment, and the denial made by the not-guilty pleas of the defendants. You are to perform this duty without bias or prejudice to any party.

At the outset, I instruct you that the guilt or innocence of each defendant must be determined by you separately and independently of any evidence which applies only to one or more of the defendants, and separately and independently of evidence which has been admitted as to one or more of the defendants and excluded as to others.

You should consider the case of each defendant as if it were being tried separately and alone. You have observed that the defendants did not take the stand to testify in their own behalf. They have a constitutional right not to do so. One of the highest constitutional safeguards in our system of criminal justice is that a defendant is not obliged to



1  
2 testify or to produce evidence in his own  
3 behalf, and he may not be called as a witness  
4 by the prosecution or compelled to give evi-  
5 dence against himself. The exercise by a  
6 defendant of his right not to testify raises  
7 no presumption of guilt and permits no unfavor-  
8 able inference of any kind to be drawn.

9           In determining a defendant's guilt or  
10 innocence of a crime charged, you are not to  
11 consider in any manner whatsoever the failure  
12 of a defendant to testify as a witness or to  
13 produce evidence in his own behalf. The law  
14 presumes a defendant to be innocent of a  
15 crime with which he is charged. This presump-  
16 tion of innocence continues throughout the  
17 trial down to the time in the jury room -- if  
18 that time arrives -- when you are satisfied  
19 from all the evidence beyond a reasonable  
20 doubt that any defendant is guilty of the  
21 crime charged.

22           The law permits nothing but legal evi-  
23 dence presented before this jury to be con-  
24 sidered in support of the charge against the  
25 accused; so the presumption of innocence alone

1 is sufficient to acquit the defendants unless  
2 you are satisfied beyond a reasonable doubt  
3 of the guilt of any defendant from all the  
4 evidence in the case.  
5

6 You have seen and heard the evidence  
7 produced in this trial, and it is the sole  
8 province of the jury to determine the facts  
9 of the case. But first I would like to call  
10 your attention to certain guides by which you  
11 are to evaluate the evidence.

12 The burden of proof is on the government  
13 to prove each element of the charges against  
14 the defendants beyond a reasonable doubt. You  
15 cannot find any defendant guilty unless you  
16 determine that the government has established  
17 by the evidence each and every essential ele-  
18 ment of the crime charged against him beyond  
19 a reasonable doubt. However, to support a  
20 verdict of guilty you need not find every  
21 fact beyond a reasonable doubt. You need  
22 only find that the crime charged has been  
23 proven beyond a reasonable doubt from all  
24 of the evidence in the case.

25 A reasonable doubt is a fair doubt



1 based upon reason and common sense and arising  
2 from the state of the evidence. By proof  
3 beyond a reasonable doubt you are not to  
4 understand that all doubt is to be excluded.  
5 It is rarely possible to prove anything to  
6 an absolute certainty. It must be a substan-  
7 tial doubt such as would make an honest and  
8 sensible and fair-minded person hesitate to  
9 act in a serious and important matter wherein  
10 ascertainment of the truth was conscientiously  
11 being sought.  
12

13 A reasonable doubt may arise not only  
14 from the evidence produced but also from a  
15 lack of evidence.

16 The law never imposes upon a defendant  
17 in a criminal case the burden or duty of pro-  
18 ducing any evidence, and since the burden is  
19 always upon the government to prove the accused  
20 guilty, by proving beyond a reasonable doubt  
21 every essential element of the crime charged  
22 a defendant has the right to rely upon a failure  
23 of the prosecution to establish such proof.

24 A defendant may also rely upon evidence  
25 brought out on cross-examination of witnesses

1  
2 for the government. If, after impartial con-  
3 sideration of all the evidence, you can candidly  
4 say that you are not satisfied of the guilt of  
5 any defendant beyond a reasonable doubt, you  
6 should find that defendant not guilty.

7       There are two types of evidence which  
8 a jury may consider in determining whether or  
9 not a defendant is guilty as charged: one is  
10 direct evidence, such as the testimony of an  
11 eyewitness. The other is circumstantial evi-  
12 dence, which consists of such proof of a chain  
13 of circumstances from which a conclusion re-  
14 garding essential facts in the case may logically  
15 be drawn.

16       Regardless of the nature of the evidence,  
17 the law requires that before convicting a de-  
18 fendant the jury must be satisfied of the de-  
19 fendant's guilt beyond a reasonable doubt from  
20 all the evidence in the case.

21       Circumstantial evidence is legal and  
22 proper for you to consider, and you may con-  
23 vict upon this class of evidence alone if  
24 thereby you are persuaded beyond a reasonable  
25 doubt of a defendant's guilt. But the



1  
2 circumstances must be such as will lead the  
3 guarded discretion of a just and reasonable  
4 man to the conclusion that the crime charged  
5 has been committed and that a defendant is  
6 guilty of its commission.

7           You will recall that counsel in this  
8 matter have stipulated or agreed to certain  
9 facts. You must accept such stipulations as  
10 evidence and regard the stipulated facts as  
11 being proved.

12           Any testimony which has been excluded  
13 or which has been stricken from the record  
14 is not evidence in this case, and you will  
15 entirely disregard it in arriving at your  
16 verdict. Likewise, the arguments of the  
17 attorneys and any statements which they made  
18 in their arguments are not evidence and will  
19 not be considered by you.

20           You will render your verdict only from  
21 the evidence in the case, which consists of  
22 the sworn testimony of the witnesses, the  
23 stipulations of counsel, and all exhibits  
24 which have been received in evidence.

25           It is your recollection of the witnesses'

1 testimony and not the attorneys' statements  
2 as to what that testimony was which shall  
3 control you in reaching your decision. But  
4 in your consideration of the evidence you are  
5 not limited to the bald statements of the  
6 witnesses. On the contrary, you are permitted  
7 to draw from facts which you find have been  
8 proved such reasonable inferences as are  
9 justified in the light of your own experience.  
10

11 If you feel that witnesses differed as  
12 to what the facts were, it is generally a  
13 safer way to reconcile the conflicting tes-  
14 timony if you reasonably can upon the theory  
15 that all of the witnesses intended to tell  
16 the truth, but if you cannot so reconcile  
17 the testimony, then you must determine from  
18 all of the evidence before you which of the  
19 witnesses is entitled to greater credit.

20 (Continued on the next page.)  
21  
22  
23  
24  
25



FL 6/1

1  
2 The credibility of the witnesses and  
3 the weight to be given their testimony are  
4 questions entirely for your determination.  
5 The law is that you are not bound to give  
6 the same weight, the same credit, or have  
7 the same faith in the testimony of each  
8 witness, but you should give their testimony  
9 just such weight, just such weight and have  
10 just such faith in it that you think it is  
11 fairly entitled to receive.

12 Consider the appearance of the witnesses  
13 on the stand, their candor or lack of candor,  
14 their feelings or bias, if any, their interest  
15 in the result of the trial, and the reason-  
16 ableness of the testimony they gave. Believe  
17 as much or as little of the testimony of each  
18 witness as you think you ought to.

19 A witness is presumed to speak the  
20 truth, but if you reach the conclusion that  
21 any witness in the case has willfully or  
22 deliberately given false testimony about any  
23 material fact, you may reject in considera-  
24 tion all of his testimony, or you may accept  
25 such part as you may feel is true, and disregard

that which you may feel is false.

Having in mind the general guidelines that I have just given you, it now becomes the duty of the Court to instruct you as to the law applicable to your determinations in this case. It is your duty as jurors to follow the law as stated in these instructions and to apply the rules of law so given to the facts as you find them from the evidence. You will not be justified under your oath as jurymen in finding a verdict contrary to the law as the Court gives it to you. It is the sole province of the jury to determine the facts in the case. The Court does not by any instructions given to you intend to persuade you as to how you should decide any question of fact. It is your duty to decide all the facts from the evidence.

All parties have a right to expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict.

Count 1 of the indictment charges a



1 violation of Title 21 United States Code,  
2 Sections 952(a) and 960(a)(1), and 18 United  
3 States Code, Section 2. Under Section 952(a)  
4 and 960(a)(1) it is unlawful to knowingly and  
5 intentionally import into the customs terri-  
6 tory of the United States from any place out-  
7 side thereof, or from within the United States,  
8 or to import into the United States from any  
9 place outside thereof any controlled substance  
10 from Schedule 1 of 21 United States Code,  
11 Section 812.  
12

13 The government and the defendants have  
14 stipulated that heroin was the substance involved  
15 in this case, or perhaps, to be more specific,  
16 they may have merely stipulated that if the  
17 chemist had testified he would have testified  
18 that the substance in the packages was heroin.

19 There are three essential elements to  
20 this offense charged in Count 1 of the indictment:  
21 1) the act of importing a narcotic  
22 drug into the United States or the customs  
23 territory of the United States from any place  
24 outside thereof, or within the United States.

25 2) that the defendant knew that it was

unlawful to import heroin into the United States, and with such knowledge intentionally imported the heroin into the United States.

And 3) that the drug imported was in fact heroin. And again I would remind you that it has been stipulated that the substance was heroin, or at least the chemist would so testify.

The term "customs territory of the United States" contained in Element 1 includes the United States -- that is the states themselves -- the District of Columbia and Puerto Rico. However, even though a person may have possession of a narcotic controlled substance which is of a foreign origin, possession alone is not sufficient in and of itself to prove the essential element of importation. In other words, it requires more evidence established to your satisfaction than mere possession to prove the element of importation.

The second element that the government must prove beyond a reasonable doubt is that the defendant acted knowingly and intentionally. An act is done knowingly if it is done voluntarily



and intentionally, and not because of mistake or accident or some other innocent reason.

An act is done intentionally if it is done knowingly, voluntarily, and willfully, and with a specific intent to do something which the law forbids. That is, with a purpose to either disobey or disregard the law.

Knowledge and willfulness of a defendant need not be proved by direct evidence, and, indeed, it seldom can be. However, like any other fact at issue, it can be established by circumstantial evidence. The acts of a person must be set in their time and place. The meaning and significance of a particular act or conduct may and usually does depend upon the circumstances surrounding the act or conduct.

You should consider the acts and conduct of each defendant and whether such facts, if you believe them, make it likely or unlikely, probable or improbable, that the defendant fully and precisely understood what he was doing. If you are not convinced beyond a reasonable doubt that each defendant knew



that the narcotic substance was unlawfully imported, you must acquit the defendant on this charge.

The government in Count 1 has also charged the defendants with violating 18 United States Code, Section 2, which is generally referred to as the aiding and abetting statute. This Act provides that whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission is guilty of a crime. An aider or abettor within the meaning of this Act is one who assists the perpetrator of a crime.

(Continued on the next page.)

PL 6/2

There are two essential elements to this offense, some overt conduct and the intent to violate the law. With reference to the first element, to aid or abet the perpetrator of a crime, it requires that the defendant associate himself with the illegal venture, that he participate in it as something that he wishes to bring about, and that he seek by his actions to make it succeed. The defendants' mere association with those who committed the crime or knowledge that the crime was to be committed are not sufficient to establish this offense.

You the jury must be convinced beyond a reasonable doubt that the defendant was a participant or a substantial assistant in the commission of the crime, rather than merely a knowledgeable spectator.

With regard to the second element of the aiding and abetting offense, I instruct you that the crime which the defendants are accused of committing is one which requires a specific criminal intent of culpable purpose in order to find any one of them guilty. Thus,



1 if you find any one of these defendants was a  
2 participant or substantially assisted in the  
3 illegal importation of a Schedule 1 narcotic  
4 controlled substance into the United States,  
5 you must then decide beyond a reasonable  
6 doubt whether the defendant did so willfully  
7 and knowingly in a community of unlawful pur-  
8 pose with some other person -- that is, did  
9 so willfully and knowingly in a community  
10 for an unlawful purpose with some other  
11 persons.  
12

13 An aider and abettor is punishable  
14 as a principal, or one who actually commits  
15 the crime and thus the intent needed to con-  
16 vict the defendant must be the same as would  
17 be required to convict a principal.

18 Still, differently stated, an aider  
19 and abettor must have the same knowledge and  
20 intent required as a principal. Thus proof  
21 of the defendant's knowledge of the illegal  
22 importation is necessary to convict him. In  
23 order to find any of the defendants guilty  
24 of aiding and abetting you must find that  
25 the defendants acted willfully and knowingly

1  
2 in aiding and abetting the illegal importation  
3 of heroin. The same considerations which I  
4 discussed earlier regarding willfulness and  
5 knowledge apply here also.

6 The government must prove each element  
7 of the offenses charged in this count beyond  
8 a reasonable doubt. And you are to consider  
9 the offense charged in this count separately  
10 against each defendant.

11 The second count of this indictment  
12 charges each defendant individually with know-  
13 ingly and intentionally possessing with intent  
14 to distribute approximately four pounds of  
15 heroin, in violation of 21 United States Code,  
16 Section 841(a)(1). Under this count the govern-  
17 ment also charges each defendant with an offense  
18 under the aiding and abetting statute, which  
19 I read to you in connection with Count 1.  
20 21 United States Section 841(a)(1) makes it  
21 unlawful for any person knowingly or inten-  
22 tionally to possess heroin with intent to  
23 distribute. There are four essential elements  
24 to the offense of knowingly or intentionally  
25 possessing heroin with intent to distribute.



1  
2 First, each defendant must knowingly  
3 and intentionally possess the heroin. Posses-  
4 sion as used in the statute can be either  
5 actual or constructive. Actual possession  
6 means that a person knowingly has manual or  
7 physical control or custody of the narcotics,  
8 that is, that they are in his personal pos-  
9 session.

10 However, even if you find that a person  
11 charged with this offense did not actually  
12 possess the narcotics, this element of the  
13 offense is satisfied if you find beyond a  
14 reasonable doubt that the defendant had con-  
15 structive possession of the controlled sub-  
16 stance.

17 A person has constructive possession  
18 of a controlled substance such as heroin if  
19 he has the power to exercise dominion and  
20 control over the substance.

21 The second element of the offense is  
22 that the possession was knowing or intentional.  
23 In this regard the instructions concerning the  
24 meaning of knowing and intentional acts which  
25 I gave to you earlier are applicable.

1  
2 The third element of the offense is  
3 that the possession was with intent to dis-  
4 tribute. This element requires that you find  
5 beyond a reasonable doubt that the possession  
6 was with intent to give, sell or otherwise  
7 transmit to others, and not for one's own  
8 personal use.

9 In this regard you may consider the  
10 amount of heroin possessed and its value as  
11 factors in determining whether the possession  
12 was with intent to distribute. This, of  
13 course, assumes that you find the fact of  
14 possession beyond a reasonable doubt.

15 The fourth element of the offense is  
16 that the substance involved here was in fact  
17 heroin, a Schedule 1 narcotic substance.

18 Finally, under this count the government  
19 charges each defendant with violating the aid-  
20 ing and abetting statute, which I have already  
21 read to you. The instructions which I gave  
22 to you earlier concerning the element of  
23 this offense apply here. You must find that  
24 the government has proved each one of the  
25 elements of this crime beyond a reasonable



You are also instructed once again to consider the evidence on this charge separately for each defendant.

There is another offense contained within the offense of possession with intent to distribute, which you may consider even though it is not contained in the indictment. This is the offense of a knowing or intentional possession of a controlled substance. The statute involved here, 21 United States Code 844, provides that it is unlawful for any person knowingly or intentionally to possess a controlled substance. You will remember that heroin is such a controlled substance.

There are two elements to this offense: the defendant must be in possession of a controlled substance, and the possession must be knowing or intentional. The same factors which I referred to earlier concerning possession apply here, and the consideration of whether the possession is knowing and intentional is the same as previously referred to.

You need not find that the defendant knowingly or intentionally possessed a controlled

1  
2 narcotic substance with intent to distribute  
3 it in order to find him guilty of the offense  
4 of possession of a controlled substance. The  
5 differentiation or the distinction is pos-  
6 session with intent to distribute or simple  
7 possession.

8           If you find the defendant not guilty  
9 of the offense of knowingly or intentionally  
10 possessing a controlled narcotic substance  
11 with intent to distribute it, you must then  
12 proceed to determine whether the defendant  
13 knowingly or intentionally possessed the  
14 narcotic. However, if you find the defendant  
15 guilty beyond a reasonable doubt of the offense  
16 charged in the indictment -- that is, posses-  
17 sion of a controlled substance with intent  
18 to distribute it -- you need not consider  
19 the offense of knowing or intentional pos-  
20 session of a controlled substance. The govern-  
21 ment must prove the elements of this offense  
22 beyond a reasonable doubt.

23           If you find any defendant guilty beyond  
24 a reasonable doubt of knowing or intentional  
25 possession of a controlled substance, you



1  
2 may find him guilty of that offense. However,  
3 if you find that the defendant is guilty beyond  
4 a reasonable doubt of possession with intent  
5 to distribute the narcotic drug, you must  
6 find him guilty of that offense as charged  
7 by the government in the indictment.

8 Of course, if you find that the evidence  
9 does not establish beyond a reasonable doubt  
10 that the defendants or any of them possessed  
11 a controlled substance with intent to dis-  
12 tribute it or possessed a controlled substance,  
13 you must find the defendants to be not guilty.

14 You must consider the evidence con-  
15 cerning this offense against each defendant  
16 separately.

17 So now I'll discuss Count 3 of the  
18 indictment, which charges against all three  
19 defendants a violation of Section 846 and 963  
20 of Title 21 of the United States Code. These  
21 are the conspiracy statutes in the Federal  
22 Drug Abuse Prevention and Control Act. The  
23 offense of conspiracy is a distinct and  
24 separate charge from those offenses charged  
25 in Counts 1 and 2 of the indictment. Therefore

you need not find any of the defendants guilty of the charges in Counts 1 and 2 if you find that they have committed the offenses charged in Count 3.

Similarly, you may find a violation of either or both of the offenses in Counts 1 and 2 and not the conspiracy statutes charged in Count 3.

Sections 346 and 363 of the Drug Abuse Prevention and Control Act in substance are as follows:

It is unlawful for any person to conspire to commit the offenses defined in Sections 341 (a) (1) and 352(a) of the Drug Abuse Prevention and Control Act. You will recall that Section 341 (a) (1) and 352(a) are the offenses charged in Counts 1 and 2 of the indictment.

To convict any or all of the defendants under the conspiracy section you must be satisfied beyond a reasonable doubt that each of the three elements of the offense has been proved with respect to the defendant or defendants. These elements are 1) that the



1 conspiracy charged in the indictment was will-  
2 fully formed and was existing at or about the  
3 date alleged.

4  
5 2) that the defendant knowingly and  
6 willfully became a member of the conspiracy.

7 And 3) that one of the conspirators  
8 thereafter knowingly committed at least one  
9 overt act in furtherance of the conspiracy.

10 The first element is that the conspiracy  
11 was willfully formed and existed at or about  
12 the time alleged in the indictment. The indict-  
13 ment charges that on or about and between the  
14 1st day of July 1973 and the 3rd day of August  
15 1973, both dates being approximate and inclu-  
16 sive, the defendant Ho Cheung Sing, the  
17 defendant Seng Kar Wong and the defendant  
18 Ip Kei Wai did knowingly and intentionally  
19 conspire to commit offenses against the United  
20 States in violation of Section 841(a)(1) and  
21 952(a) of Title 21 United States Code by con-  
22 spiring to knowingly and intentionally import  
23 into the United States from a point outside  
24 thereof and to possess with intent to distribute  
25 a quantity of heroin, a Schedule 1 narcotic

1  
2 drug controlled substance.

3 A conspiracy is a combination of two  
4 or more persons to accomplish by concerted  
5 action some unlawful purpose, that is, to  
6 commit an offense against the United States.  
7 The heart of a conspiracy is the combination,  
8 but this combination may exist without any  
9 express or formal agreement among the members.

10 Also a conspiracy may exist even though  
11 there were no words spoken or in writing stating  
12 the members' object or purpose or the details  
13 or means of accomplishment of the conspiracy.

14 What must be shown, however, is that  
15 the members in some way, impliedly or expressly,  
16 came to a mutual understanding to attempt to  
17 commit an offense against the United States.  
18 This showing need not be made by direct evidence.  
19 It may be and usually is proved by circumstantial  
20 evidence.

21 Therefore, in this case, to satisfy  
22 the first element of the offense you must be  
23 satisfied beyond a reasonable doubt that two  
24 or more persons combined as I have defined  
25 that term above for the purpose of either



1 knowingly and intentionally importing into  
2 the United States from a point outside thereof  
3 a quantity of heroin, a Schedule 1 narcotic  
4 drug controlled substance, or of knowingly  
5 and intentionally possessing with intent to  
6 distribute a quantity of heroin, a Schedule  
7 1 narcotic drug controlled substance.  
8

9 The second element is that the defendant  
10 knowingly and willfully was a member of the  
11 conspiracy charged in the indictment. To  
12 satisfy the second element you must find  
13 that the defendant knew the objects of the  
14 conspiracy, either knowingly and intentionally  
15 importing into the United States from a point  
16 outside thereof a quantity of heroin, or of  
17 knowingly and intentionally possessing with  
18 intent to distribute a quantity of heroin.

19 You need not find, however, that the  
20 defendant had full knowledge of all of the  
21 details of the conspiracy. You must also  
22 find that the defendant knowingly and willfully  
23 participated in the conspiracy with the intent  
24 to further some object or purpose of the con-  
25 spiracy.

1  
2 By knowingly and willfully, I mean that  
3 the defendant acted voluntarily and intentionally  
4 with the intent being to disobey or disregard  
5 the law.

6 By joining the conspiracy, I mean that  
7 the defendant became a member of it. Mere  
8 association with other conspirators is not  
9 sufficient to make one a member of a conspiracy.

10 The third element is that one or more  
11 of the conspirators during the existence of  
12 the conspiracy knowingly committed at least  
13 one overt act. An overt act is any act know-  
14 ingly committed by one or more of the con-  
15 spirators in an effort to effect some purpose  
16 or object of the conspiracy. An overt act  
17 need not be criminal in nature if considered  
18 separately and apart from the conspiracy. It  
19 may be alone entirely innocent, but it must be  
20 an act which follows and tends toward the  
21 accomplishment of the plan of the conspiracy.

22 In order to satisfy the third element  
23 in this case you must find that at least one  
24 overt act was knowingly committed by one or  
25 more of the conspirators in an effort to



effect some purpose or object of the conspiracy during its existence.

You must also find that this act or acts follows and tends toward the accomplishment of the plan of the conspiracy. In considering the elements of the offense of conspiracy as stated above you may consider all the elements in this case. If you find that each of the elements of the offense of conspiracy have been proved beyond a reasonable doubt with respect to any defendant, then you must return a verdict of guilty against that defendant or defendants.

If, however, you are not convinced beyond a reasonable doubt as to any defendant, you must return a verdict of not guilty as to that defendant or defendants.

There is still another offense included in the offense of conspiracy to knowingly or intentionally possess a controlled substance with intent to distribute. This is the offense of conspiracy to knowingly or intentionally possess a controlled substance.

To find any defendant guilty of this

1 offense the government must prove beyond a  
2 reasonable doubt that all of the elements  
3 of a conspiracy as I have described them to  
4 you are present, but that the object of the  
5 conspiracy was to knowingly or intentionally  
6 possess a controlled substance.  
7

8 You need not find that there was any  
9 intent to distribute the controlled substance  
10 in order to find any defendant guilty of  
11 this offense. Again the distinction is one  
12 of simple possession as opposed to possession  
13 with intent to distribute.

14 If you find any defendant not guilty  
15 of the offense of conspiring to knowingly or  
16 intentionally possess a controlled substance  
17 with intent to distribute as alleged in  
18 Count 3 of the indictment, you must then con-  
19 sider the offense of conspiracy to knowingly  
20 or intentionally possess a controlled substance.

21 My instruction to you in this -- my  
22 instructions to you in this regard do not  
23 affect your consideration of the government's  
24 contentions in Count 3 of the indictment that  
25 the defendants conspired to import a controlled



Charge of the Court

48a

677a

substance into customs territory of the United  
States.

(Continued on the next page.)

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1  
2 I again want to suggest to you that  
3 while the law is for the Court, and you are to  
4 apply the law as given you in these instruc-  
5 tions, the findings of the facts in the case  
6 is entirely for you to determine.

7 Whatever reference the Court has made to  
8 the evidence for pleadings is only for the pur-  
9 pose of making application of the principals  
10 of law to the issues in this case, and without  
11 any purpose of indicating in the least degree  
12 how the Court may think that the case ought to  
13 be decided on the facts; that is for you to  
14 determine.

15 The Exhibits which have been admitted  
16 into evidence during the trial are for you  
17 consideration in your deliberations. You  
18 merely have to ask that they be brought to the  
19 jury room. You must return a verdict of guilty  
20 or not guilty as to each defendant on each  
21 Count. Your verdict must be unanimous, and  
22 will be delivered orally by your Foreman in  
23 response to inquiries made by the Clerk.

24 If you find the defendant, or any of  
25 them, guilty of the charge contained in Count



Two, you must further advise the Court whether you have the defendant or defendants guilty of possession of a Controlled Substance with intent to distribute it, or simply possession of such Controlled Substance.

If you find the defendants, or any one of them, guilty of the offense contained in Count Three, with reference to the Conspiracy to possess a Controlled Substance with intent to distribute it, you must also advise the Court whether you find the defendant or defendants guilty of a Conspiracy to possess a Controlled Substance with intent to distribute it, or a Conspiracy to simply possess the substance.

Do counsel wish a side bar at this time?

(Side bar.)

THE COURT: Does the Government have any exceptions?

MR. WOODFIELD: Just one thing, your Honor, as far as Count Three goes, it can also be a Conspiracy to import. I believe you mentioned a Conspiracy to possess and distribute and I would ask that you include a Conspiracy to import.

2 THE COURT: I Charged it originally in  
3 the first part.

4 MR. WEISBARD: That is my understanding.

5 MR. ROCHMAN: May I talk to that particu-  
6 lar point? With respect to your Honor's Charge  
7 on Count Three as it appears in the indictment,  
8 with respect to the second element, I believe  
9 your Honor said that the Government in effect  
10 can prove either a Conspiracy to import, or a  
11 Conspiracy to possess.

12 I think the Government, your Honor, is  
13 limited by its own language and the language  
14 of Count Three is a Conspiracy to import and  
15 possess.

16 THE COURT: What does the Government  
17 say as to that?

18 MR. WOODFIELD: "And" is construed as  
19 "or."

20 THE COURT: In an indictment? That's  
21 the way the Court so construed it, anyway.  
22 But we will note your objection. The Court  
23 already noticed that the language was "and,"  
24 but we construed it as being "or."

25 I might point out, I think it could



1 4  
2 have been a little more artfully drafted in  
3 that regard, but I think that was the inten-  
4 tion.

5 MR. ROCHMAN: Would your Honor take up  
6 the matter of other business briefly?

7 I assume that your Honor understood when  
8 I made certain motions prior to those stipula-  
9 tions this morning that I was attempting, and  
10 should have said more explicitly that I was  
11 renewing my motion for a judgment of acquittal  
12 based on all the arguments that I made yester-  
13 day, at the end of the entire case.

14 THE COURT: We so understood.

15 MR. ROCHMAN: Thank you, your Honor.

16 With respect to Mr. Woodfield's Summa-  
17 tion, I would object and move for a mistrial  
18 on the ground that Mr. Woodfield used the  
19 following phrase, "Counsel attempted to con-  
20 vince you that their clients . . . did not  
21 know that the package contained heroin."

22 Your Honor, I was most careful in my  
23 argument to explain to the jury that defend-  
24 ant had no burden of proving anything. I  
25 never said anything remotely resembling that

1 I was attempting to convince them that in fact  
2 my client did not know it -- the farthest I  
3 went was in terms of suggesting that his conduct  
4 was both consistent with his knowing and not  
5 knowing, and you must acquit. In view of  
6 what I regard as a grievous misstatement of  
7 the argument which could have no effect other  
8 than to confuse and prejudice the jury, I would  
9 move for a mistrial.  
10

11 THE COURT: Motion denied.

12 MR. WEISBARD: I would join in that ap-  
13 plication.

14 THE COURT: Motion denied.

15 MR. ROCHMAN: With respect to Mr.  
16 Woodfield's reference to the signature which  
17 appears -- I don't recall the Exhibit number  
18 --

19 MR. WEISBARD: Exhibit 5.

20 MR. ROCHMAN: Mr. Woodfield referred to  
21 the signature which appears on the back of  
22 one of the documents that Mr. Wong presented  
23 for identification.

24 THE COURT: The Court knows the one you  
25 are referring to.



1                   MR. ROCHMAN: There is no proof in the  
2                   record that the signature that appears on that  
3                   Exhibit is the handwriting of Mr. Wong, that  
4                   Mr. Wong signed the name that appears there,  
5                   and it is totally improper at this late date,  
6                   without the Government having introduced any  
7                   evidence with regard thereto, to ask the jury  
8                   to compare Mr. Wong's signature on the tally  
9                   sheet, which I think is Government Exhibit 5,  
10                  with the signature of whoever it may be that  
11                  appears on the back of 12.  
12

13                 As part of that objection, the Govern-  
14                 ment has offered no expert opinion with respect  
15                 to handwriting. The Government should have  
16                 proven Wong signed it, put in the handwriting  
17                 expert to prove that the two are not the same.  
18

19                 The jury needed the guidance of expert  
20                 opinion, and it should not be permitted to  
21                 speculate about matters outside the province  
22                 of its own expertise, and on those combined  
23                 bases, I move for a mistrial.  
24

25                 THE COURT: What do you say, Mr. Woodfield?

                  MR. WOODFIELD: It is clearly within  
                  the province of the jury to determine that. As

1 7  
2 I stated, and the record will bear me out, I  
3 did not offer this to compare the signature,  
4 I offered it so the jury may make an examina-  
5 tion to see if that tally sheet does say the  
6 name Wong Seng Kar.

7 MR. ROCHMAN: I respectfully submit  
8 that is a facetious response. I don't mean  
9 to be rude, but I think that is a meaningless  
10 response to your Honor's question.

11 THE COURT: Mr. Woodfield only suggested  
12 to the jury that they conduct an experiment.  
13 I do not recall that he indicated to the jury  
14 in any sense that they ought to arrive at a  
15 particular conclusion from that, or that he  
16 had any specific intentions as far as that was  
17 concerned.

18 We will note your motion for a mistrial.  
19 Denied.

20 MR. WEISBARD: I join in that.

21 MR. JACOBS: As do I on all of them.

22 THE COURT: Denied.

23 MR. ROCHMAN: My objection is not predi-  
24 cated on any specific language that Mr. Woodfield  
25 used. I don't write down that quickly so that



8

I have it, but I think the clear import of what he said was "compare the signatures."

I would object lastly to the term "red-handed." I think it is an inflammatory conclusory statement that in no way is borne out by the evidence. I object to it, and I object to Mr. Woodfield's own opinion as to the guilt or innocence of these defendants in the case.

THE COURT: I note your objection and deny the motion, if you are moving for a mistrial.

MR. ROCHMAN: On each of them individually, sir, and collectively.

THE COURT: I think I adequately instructed the jury with respect to the arguments of counsel in that regard.

MR. ROCHMAN: I also have to confess that when I hear a Charge and don't see it in advance, I may not have heard you say something like this, and if I didn't, and you did say it, I apologize. I hope I heard clearly, or I am not sure that I heard your Honor say that with respect to Count Three, as well as Counts One and Two, and the lesser Count in Count Two, that on that Count before the jury they may

convict with respect to Count Three -- for them<sup>636</sup>  
to convict with respect to Count Three, it  
requires the Government prove beyond a reason-  
able doubt that the defendant knew that the  
package contained heroin.

But under the facts of this case, the  
Government would have to prove beyond a reason-  
able doubt that the defendants Conspired to  
Import and possess, and in order to Conspire  
to import heroin and to possess heroin, you  
must know that the package or whatever vehicle  
you are importing for -- and possessing it in  
contains heroin.

I confess that I did not hear your Honor  
-- you may have covered that -- Your Honor, I  
have just looked at the indictment now, I was  
drawn to it, and this indictment does not with-  
in the Conspiracy Count allege one single overt  
act for the jury to consider.

On that basis, I move to dismiss Count  
Three, and I move again to dismiss the entire  
indictment.

THE COURT: Your motions are denied,  
and exceptions are noted.



MR. JACOBS: We join in all the motions.

MR. WEISBARD: Yes.

THE COURT: Same ruling.

MR. WEISBARD: I understood previously.

MR. ROCHMAN: As a matter of mechanics, may I be permitted, with Mr. Woodfield, and one of your Honor's young men to number the large set of Charges that I handed to you so they may be clear on the record for appeal?

THE COURT: This is something I want --

MR. ROCHMAN: It's my fault.

THE COURT: This is something I wanted to discuss with counsel. The Clerk advises me that they should be marked as Court Exhibits, so we will let the Clerk so mark them.

In connection with that, you can number your pages.

MR. ROCHMAN: It is entirely up to your Honor. I only hand-wrote them because of the pressure of time. If we could agree, I would take them back, with Mr. Woodfield, or any other representative of his office, have them typed up, and get the corresponding numbers so that the Appellate Court might have a legible --

1 THE COURT: We will mark them at this  
2 time as Court Exhibits. You agree among your-  
3 selves as far as the record, that is up to you.

4 Anything further?

5 MR. WOODFIELD: Do I understand that your  
6 Honor will instruct that only twelve of the  
7 jurors go into the jury room?

8 (Open court.)

9 THE COURT: At this time, I will inform  
10 the jury that Uncle Sam is going to buy your  
11 lunch.

12 I am going to apologize to Mr. Volke  
13 and Mr. Harrington that we cannot have the  
14 Government buy your lunch because I am going  
15 to discharge you at this time as Alternates.

16 I thank you for your attention and  
17 your assistance, and we have come down to that  
18 point, the other twelve members looking hale  
19 and hearty, and I think they will make it  
20 through the deliberations.

21 The jury will retire to the jury room,  
22 and Mr. Volke and Mr. Harrington, with the  
23 Court's appreciation, will be excused.

24 THE CLERK: Will you take your belongings  
25



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12

Charge of the Court

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first, and go downstairs to the jury room.

(Alternates excused.)

(Two Marshals Sworn by the Clerk of the  
Court.)

(Whereupon, at 1:30 P.M., the jury  
repaired to the jury room to begin their  
deliberations.)

End of AM

(continued on next page.)

1  
J:GA  
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AFTERNOON SESSION

61a

(3:25 o'clock P.M.)

3  
4  
5 THE CLERK: Jury Note, marked Court  
6 Exhibit 5.

7 (So marked.)

8 THE COURT: Mr. Weisband's Requests to  
9 Charge have been marked Court Exhibit 2.

\*\*\*\* 10 Mr. Jacob's Requests to Charge, as  
\*\*\*\* 11 Court Exhibit 3.

12 Mr. Rochman's Request to Charge as  
\*\*\*\* 13 Court Exhibit 4.

14 We have note from the Jury which has  
15 been marked as Court Exhibit 5, signed by  
16 the Foreman.

17 "Number one. Indictment.

18 "Number two. Tally sheet, Exhibit  
19 number 2.

20 "Number three. Identification cards,  
21 Exhibits 12 and 12-A.

22 "Number four. Exhibit number one."

23 There is a fifth one, but before we get  
24 to that, I assume that what they are doing is  
25 asking for these Exhibits, and I guess they

\* \* \*



(Jury present at 6:35 p.m.)

THE COURT: Ladies and gentlemen,  
I take it you have not completed your deliberations as yet.

THE FOREMAN: We have not.

THE COURT: This is an important case, of course, to the defendants and the government as well, the parties. It is not the intention of the Court to expose you to the pressure of time. You have been in here since 9:30. You have had a somewhat late lunch, but you have not eaten this evening, and so it is the intention of the Court at this time to excuse you and ask you to return in the morning at 9:30.

THE FOREMAN: Tomorrow morning?

THE COURT: Saturday morning. I take it there is some disfavor, but I think it your duty to return and deliberate and I do want to caution you that, as I have before, you are not to talk to anybody or listen to anybody about this case or discuss it with anyone.

Before the case was on trial, but now you are in the process of deliberations and

1  
2 your judgment as far as the deliberations  
3 are concerned must be your own and solely  
4 your own, and it is my intention, when you  
5 return in the morning, to ask you whether  
6 you have discussed the case with anybody or  
7 read or heard or listened to anybody concern--  
8 ing it, and I expect you in good conscience  
9 to be able to answer in the negative that  
10 you have not.

11 Do you have a further request?

12 THE FOREMAN: We have a further request  
13 for some information, your Honor.

14 THE COURT: I think since we are --  
15 I will look at it.

16 THE FOREMAN: You may want to look  
17 at it.

18 THE COURT: I have your request, and  
19 we will mark this and we will advise you with  
20 reference to your request in the morning.

21 Rather than keep you any longer --  
22 I might also say, the Clerk will tell you we  
23 have your notes, some of the notes have not  
24 been complied with yet and a couple of them  
25 have. I will leave that up to the Clerk and



1  
2 the Marshal to advise you.

3 I will excuse you at this time and  
4 advise counsel, after you have left, because  
5 you don't have to be here, as to the nature  
6 of this last request, and we will advise you  
7 with reference to this in the morning.

8 I regret that this may apparently  
9 bother some of you, but this is in the cause  
10 of justice. It is very important, and I do  
11 have to ask you to return in the morning.

12 So we will excuse you until 9:30 in  
13 the morning.

14 (Jury excused at 6:40 p.m.)

15 THE COURT: The latest request by the  
16 jury reads as follows:

17 "May we please have a restatement of  
18 the legal meanings of the words 'possess,  
19 import, distribute and conspiring.'"

20 While we didn't define the words in  
21 our charge, we will pick out the appropriate  
22 wording from the charge and advise the jury  
23 in the morning with reference to this.

24 Anything further this evening, gentlemen?

25 MR. ROCHMAN: Good night, your Honor.

(Whereupon an adjournment was taken to  
November 10, 1973, at 9:30 a.m.)

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Mr. Rochman 564

Mr. Jacobs 607

Mr. Weisband 616

Mr. Woodfield 633

Charge of the Court -- Page 647ExhibitsCourt'sFor Id.

2 Weisband Req to Charge 690

3 Jacobs Req to Charge 690

4 Rochman 690

5 Note from Jury 696



1  
2 THE COURT: All right, bring in the jury,  
3 please.

4 MR. ROCHMAN: Is your Honor going to reread  
5 those parts of your instructions that deal with  
6 the phrases asked?

7 THE COURT: Yes. What do you mean, Mr.  
8 Rochman?

9 MR. ROCHMAN: I am just attempting to  
10 determine, sir -- there is a note, as I recall,  
11 before you --

12 THE COURT: I am just going to very briefly  
13 touch on the areas that they have requested. I  
14 am not going to read the entire charge on each.

15 MR. ROCHMAN: My request would be that,  
16 your Honor, with respect to any phrase that is  
17 mentioned, that your Honor read that part of your  
18 charge that deals with that phrase.

19 THE COURT: I think that I do this in  
20 substance, Mr. Rochman.

21 MR. ROCHMAN: May I renew my request, the  
22 written request to charge that I gave your Honor,  
23 not the numbered requests, but those parts that  
24 were Xerox'd copies of the charge Judge Balman  
25 in the Southern District In United States versus

1  
2  
3 Anthony Soldano, et al. There is language near  
4 the end of that charge, with respect to the  
5 obligation to jurors to deliberate, consult with  
6 your other fellow jurors, but to, if they still  
7 are not convinced, retain their own individual  
8 belief. I am paraphrasing the language.

9 THE COURT: I think that is sort of a  
10 modified Allen charge, and I would intend to give  
11 the jurors some such charge if it became obvious  
12 that they were having difficulty or could not agree.  
13 But I don't intend to give it as part of the  
14 principal charge.

15 MR. ROCHMAN: Thank you, sir.

16 THE COURT: Bring in the jury, please.

17 (Whereupon at 9:45 A.M., the jury entered  
18 the courtroom.)

19 THE COURT: Good morning, ladies and  
20 gentlemen. Last evening, when you were excused,  
21 I advised you I was going to ask you this morning  
22 if you talked read or listened to anything about  
23 this case with anybody else, because it is in the  
24 process of deliberation, and it must be your own  
25 judgment.

I am going to assume that you have not,



1  
2 unless in some way you indicate to me at this time,  
3 that you have. All right.

4 We have a request from Mr. Tyler, which  
5 has been marked as Court Exhibit No. 6, which  
6 reads as follows:

7 "May we have, please, a restatement of  
8 the legal meanings of the words possess, import,  
9 distribute and conspiring."

10 I have examined the part of the charge that  
11 dealt with those, and may add slightly thereto,  
12 but I will start in the order that they are given.

13 The word "possess." The meaning of the  
14 word "possess" in the law, is no different than  
15 its ordinary and customary meaning. It means to  
16 have dominion and control over the object involved.  
17 In this case, that would be the controlled substance.  
18 However, possession may be actual or constructive,  
19 and I am going to read to you from the charge on  
20 the actual and constructive possession.

21 This is the language from the charge that I  
22 gave you previously: Actual possession means that  
23 a person knowingly has manual or physical control  
24 or custody of the narcotics, that is, that they are  
25 in his personal possession.

1  
2  
3 However, even if you find that a person  
4 charged with this offense did not actually possess  
5 the narcotics, this element of the offense is  
6 satisfied if you find beyond a reasonable doubt  
7 that the defendant had constructive possession of  
8 the controlled substance.

9 A person has constructive possession of a  
10 controlled substance such as heroin if he has power  
11 to exercise dominion and control over the substance.

12 The second word on which you requested  
13 meaning was the word "import." There is a  
14 statutory definition that I did not give to you,  
15 I don't know how much help it would be, but I am  
16 going to read it to you.

17 It is contained in 21 United States Code  
18 951. It defines the word "import" as any bringing  
19 in or introduction of an article into any area.  
20 That definition of the word "import" again -- it  
21 defines the word "import" as any bringing in or  
22 introduction of an article into any area.

23 You should listen to this very carefully  
24 because I am reading now from the Statutes involved,  
25 or my charge relative to the Statutes involved in  
the indictment. Under Section 952 (a) and Section



1  
2  
3 960 (a) 1, it is unlawful to knowingly and  
4 intentionally import into the customs territory  
5 of the United States from any place outside thereof,  
6 but within the United States, or to import into  
7 the United States from anyplace outside thereof,  
8 any controlled substance in Schedule 1 of 21 United  
9 States Code 812.

10 Then I go on to say, the Government and  
11 the defendants have stipulated that heroin was the  
12 substance involved in this case, and heroin is a  
13 controlled substance listed in Schedule 1 of the  
14 Statute.

15 The next word you asked for was the word  
16 "distribute." There also is a statutory definition  
17 of the word "distribute" and it is in 21 United  
18 States Code 802.

19 That defines the word "distribute" as  
20 delivering a controlled substance. However, in the  
21 charge, I define possession with intent to distribute  
22 as the intent to give, sell, or otherwise transmit  
23 to others, and not for one's own personal use.

24 The final word you have as "conspiring", but  
25 I did not define the word "conspiring" but I did  
define a conspiracy. I think that will cover your

1  
2 request.

3 That is as follows: A conspiracy is a  
4 combination of two or more persons to accomplish  
5 by concerted action, some unlawful purpose, that  
6 is to commit an offense against the United States.

7 The heart of a conspiracy is the combination,  
8 but this combination may exist without any express  
9 or formal agreement among the members. Also, a  
10 conspiracy may exist, even though there were no  
11 words spoken or in writing, stating the members  
12 objective or purpose, or the details or means of  
13 accomplishment of the conspiracy.

14 What must be shown, however, is that the  
15 members in some way, impliedly or expressly, came  
16 to a mutual understanding to attempt to commit  
17 an offense against the United States. This showing  
18 need not be made by direct evidence. It may be, and  
19 usually is, proved by circumstantial evidence.

20 Mr. Foreman, does that answer your questions  
21 as the Court understands them?

22 THE FOREMAN: Yes.

23 THE COURT: Anything, gentlemen?

24 MR. ROTHMAN: May we have a sidebar, your  
25 Honor?



1  
2 THE COURT: Yes.

3 (Sidebar discussion).

4 THE COURT: It has just been called to  
5 my attention that the interpreter is not here.

6 MR. WEISBAND: I noticed that, too. As  
7 far as my client Ho is concerned, I will waive  
8 the presence of the interpreter. I don't think  
9 it affects him so far as your charges are  
10 concerned, or questions from the jury, Your Honor,  
11 and I will not delay these proceedings.

12 THE COURT: How about the other defendants?

13 MR. JACOBS: I join in that.

14 MR. ROCHMAN: I speak only for defendant  
15 Ip. I have never utilized the services of Mr.  
16 Chen during the trial, and I am not about to make  
17 a claim that I need him now. I speak only for  
18 Mr. Ip.

19 My first exception to your Honor's response  
20 to the jury's request with respect to the word  
21 possess or possession, I am not sure which one it  
22 was -- I believe it was possession --

23 THE COURT: Possess.

24 MR. ROCHMAN: Especially, in view of the  
25 facts of this case, and the thrust of the defense,

1  
2 I believe that your Honor has not sufficiently  
3 made clear to the jury, again, that it must be  
4 proven beyond a reasonable doubt, that a defendant  
5 or defendants had actual knowledge that what they  
6 possessed was heroin. The mere possession of the  
7 package, actual or constructive, is not in and  
8 of itself, sufficient in this case.

9 I am making the same request with respect  
10 to your Honor's response to the juror's question  
11 concerning the word distribute, that again it must  
12 be made clear to the jury that the charge is  
13 possession with intent to distribute, and again,  
14 unless they find beyond a reasonable doubt that the  
15 defendants actually -- any defendant or defendants  
16 actually knew that what they possessed was heroin,  
17 there can be no conviction of the crime of possession  
18 with intent to distribute.

19 My objection with respect to your Honor's  
20 response to the juror's question with respect to  
21 the word "conspiring" -- was it conspiring or  
22 conspiracy?

23 THE COURT: Conspiring.

24 MR. ROCHMAN: Which, I take it, your Honor --

25 THE COURT: I told them I had not said



1  
2 anything about conspiring. I thought they meant  
3 conspiracy.

4 MR. ROCHMAN: I don't think that your  
5 Honor has made sufficiently clear -- of course, I  
6 say this respectfully -- that as indicated in  
7 one of my requests to charge, that the essence of  
8 conspiracy is an agreement, whether that agreement  
9 is proven by implication or direct evidence, the  
10 essence, the nub, the essential element of the  
11 conspiracy is an agreement.

12 I think that is the language that has been  
13 approved by the Court of Appeals in this Circuit  
14 on numerous occasions, and the jury has to understand  
15 conspiracy involves an agreement, that that is an  
16 essential element.

17 In addition, I don't believe that your Honor  
18 charged elements of conspiracy that your Honor  
19 gave -- when your Honor now answered the question  
20 with respect to conspiring, your Honor did not read  
21 that part of the charge which gave the elements  
22 of a conspiracy, including, among other things, the  
23 necessity of the commission of an overt act.

24 THE COURT: Would you like to have me read  
25 the elements?

1  
2  
3 MR. ROCHMAN: I think that I would ask that  
4 you so do.

5 THE COURT: I will do so. I will note an  
6 exception.

7 MR. WOODFIELD: I have one thing further,  
8 if you are defining possession, you used the term  
9 dominion and control. I would request that the  
10 words dominion and control be explained to the jury.  
11 I think that would be needed for a full understanding  
12 of the term "possess."

13 THE COURT: I will see what I can do in that  
14 area.

15 MR. ROCHMAN: If your Honor does do that,  
16 attempts to explain in some way, I renew my request  
17 that again dominion and control over property or  
18 items or articles which a person does not know to  
19 be heroin, is not the kind of constructive possession  
20 or dominion and control that is required, and I again  
21 ask your Honor to please, especially under the facts  
22 and circumstances of this case, and the thrust of  
23 the defendants', that your Honor make that point  
24 to the jury clear.

25 MR. WOODFIELD: I would object to that. They



1  
2 asked for the definition, an explanation of the  
3 term possess.

4 THE COURT: I will give you an exception  
5 on that. I will read the elements of the  
6 conspiracy.

7 MR. ROTHMAN: I really just want them to  
8 understand that there has to be actual, constructive,  
9 whatever kind of possession -- dominion and control  
10 over something that they know to be heroin. That is  
11 the heart of the case.

12 THE COURT: I understand.

13 (In open court).

14 THE COURT: Ladies and gentlemen, two items  
15 have been brought up at the sidebar conference.  
16 One has to do with the meaning of the word possess,  
17 and as I advised you, this has its customary and  
18 ordinary meaning. Then I went on to say it means  
19 to have dominion and control over the object  
20 involved, which in this case, would be the heroin.

21 Perhaps to try to define the words dominion  
22 and control might be rather difficult, but I would  
23 say that this would mean to be in such a position,  
24 that with respect to the substance or object  
25 involved, you could direct what could be done with it.

1  
2 In other words, it is kind of an intangible  
3 situation, but you would be in charge, and able  
4 in some way, actually or constructively, to do  
5 something with this object. In this case, it could  
6 be distribute, perhaps, or use it for your own  
7 use, or burn it, or do whatever you wanted, but you  
8 would be in a position to do this. That's what  
9 I think we mean by the words dominion and control.  
10 And also, I think your common experience as to the  
11 word possess will stand you in good stead.

12 One other thing that has been requested by  
13 counsel, insofar as a conspiracy is concerned, is  
14 for me to read you the elements of the conspiracy  
15 again. This will only take a few minutes, and I  
16 think I will do so.

17 To convict any or all of the defendants under  
18 the conspiracy section, you must be satisfied beyond  
19 a reasonable doubt that each of the three elements  
20 of the offense has been proved with respect to the  
21 defendant or defendants: One, that the conspiracy  
22 charged in the indictment was wilfully formed, and  
23 was existing at or about the date alleged.

24 Two, that the defendant knowingly and wilfully  
25 became a member of the conspiracy; and three, that



1  
2 one of the conspirators thereafter knowingly  
3 committed at least one overt act in furtherance  
4 of the conspiracy.

5       The first element is that the conspiracy  
6 was wilfully formed and existed at or about the  
7 time alleged in the indictment. The indictment  
8 charges that on or about and between the first  
9 day of July 1973, and the third day of August,  
10 1973, both dates being approximate and inclusive,  
11 the defendant Ho Cheung Sing, the defendant Seng  
12 Kar Wong and the defendant Ip Kei Wai, did  
13 knowingly and intentionally conspire to commit  
14 offenses against the United States, in violation  
15 of Sections 841(a) (1) and 952 (a) of Title 21,  
16 United States Code, by conspiring to knowingly  
17 and intentionally import into the United States,  
18 from a point outside thereof, and to possess with  
19 intent to distribute, a quantity of heroin, a  
20 Schedule 1, narcotic drug controlled substance.  
21 This is the part I previously read to you.

22       A conspiracy is a combination of two or  
23 more persons to accomplish by concerted action  
24 some unlawful purpose, that is, to commit an offense  
25 against the United States.

1  
2           The heart of a conspiracy is the combination,  
3 but this combination may exist without any express  
4 or formal agreement among the members.

5           Also, a conspiracy may exist even though  
6 there were no words spoken or in writing, stating  
7 the members' object or purpose, or the details  
8 or means of accomplishment of the conspiracy. What  
9 must be shown however, is that the members in some  
10 way, impliedly or expressly, came to a mutual  
11 understanding to attempt to commit an offense against  
12 the United States. This showing need not be made  
13 by direct evidence. It may be, and usually is,  
14 proved by circumstantial evidence.

15           Therefore, in this case, to satisfy the  
16 first element of the offense, you must be satisfied  
17 beyond a reasonable doubt, that two or more persons  
18 combined, as I have defined that term above, for  
19 the purpose of either knowingly and intentionally  
20 importing into the United States from a point outside  
21 thereof, a quantity of heroin, a Schedule 1 narcotic  
22 drug controlled substance, or of knowingly and  
23 intentionally possessing with intent to distribute,  
24 a quantity of heroin, a Schedule 1 narcotic drug  
25 controlled substance.



1  
2 The second element is that the defendant  
3 knowingly and wilfully was a member of the conspiracy  
4 charged in the indictment. To satisfy the second  
5 element, you must find that the defendant knew the  
6 objects of the conspiracy, either knowingly and  
7 intentionally importing into the United States from  
8 a point outside thereof, a quantity of heroin, a  
9 schedule one narcotic drug controlled substance,  
10 or of knowingly and intentionally possessing with  
11 intent to distribute, a quantity of heroin, a  
12 Schedule 1 narcotic drug controlled substance.

13 You need not find, however, that the defendant  
14 had full knowledge of all the details of the  
15 conspiracy. You must also find that the defendant  
16 knowingly and wilfully participated in the conspiracy  
17 with the intent to further some object or purpose  
18 of the conspiracy. By knowingly and wilfully, I  
19 mean that the defendant acted voluntarily and  
20 intentionally, with the intent being to disobey or  
21 disregard the law. By joining a conspiracy, I mean  
22 that the defendant became a member of it.

23 Mere association with other conspirators is  
24 not sufficient to make one a member of the conspiracy.

25 The third element is that one or more of the

1  
2 conspirators, during the existence of the conspiracy,  
3 knowingly committed at least one overt act.

4 An overt act is any act knowingly committed  
5 by one or more of the conspirators in an effort to  
6 effect some purpose or object of the conspiracy.

7 An overt act need not be criminal in nature, if  
8 considered separately and apart from the conspiracy.  
9 It may be alone entirely innocent, but it must be  
10 an act which follows and tends toward the accomplish-  
11 ment of the plan of conspiracy.

12 In order to satisfy the third element in  
13 this case, you must find that at least one overt  
14 act was knowingly committed by one or more of the  
15 conspirators in an effort to effect some purpose or  
16 object of the conspiracy during its existence.

17 You must also find that this act or acts  
18 follow and tend toward the accomplishment of the  
19 plan of the conspiracy. In considering the elements  
20 of the offense of conspiracy, as I have stated  
21 them above, you may consider all of the evidence in  
22 this case.

23 If you find that each of the elements of  
24 the offense of conspiracy have been proved beyond  
25 a reasonable doubt with respect to any defendant,



1  
2 then you must return a verdict of guilty against  
3 that defendant or defendants.

4 If however, you are not convinced beyond  
5 a reasonable doubt as to any defendant, you must  
6 return a verdict of not guilty as to that defendant  
7 or defendants.

8 There is another offense included in the  
9 offense of conspiracy to knowingly or intentionally  
10 possess a controlled substance with intent to  
11 distribute. This is the offense of conspiracy to  
12 knowingly or intentionally possess a controlled  
13 substance, and to find any defendant guilty of this  
14 offense, the Government must prove beyond a  
15 reasonable doubt that all the elements of the  
16 conspiracy, as I have described them to you, are  
17 present, but that the object of the conspiracy was  
18 to knowingly or intentionally possess a controlled  
19 substance.

20 You need not find that there was any intent  
21 to distribute the controlled substance in order to  
22 find any defendant guilty of the offense. If you  
23 find any defendant not guilty of the offense of  
24 conspiracy to knowingly or intentionally possess  
25 a controlled substance with intent to distribute,

1  
2 as alleged in count three of the indictment, you  
3 must then consider the offense of conspiracy to  
4 knowingly or intentionally possess a controlled  
5 substance.

6 My instructions to you in this regard do  
7 not affect your consideration of the Government's  
8 contention in count three of the indictment that  
9 the defendants conspired to import a controlled  
10 substance into the Customs territory of the United  
11 States.

12 If the defendants took any exception to  
13 that charge before, they are renewed at this  
14 time.

15 All right, ladies and gentlemen, we have  
16 tried to answer your inquiries so you may return  
17 to the jury room for your deliberations.

18 (Whereupon at 10:05 A.M., the jury  
19 retired to resume their deliberations.)

20 MR. ROCHMAN: To the extent that your  
21 Honor's charge with respect to the words dominion  
22 and control, as they deal with constructive  
23 possession, does not follow the language used  
24 by the Court of Appeals in this Circuit, and  
25 approved repeatedly, particularly in United States



JUDGMENT AND COMMITMENT (FILED JANUARY 23, 1974)

84a

JUDGMENT AND COMMITMENT (Rev. 2-68)

FILED  
IN CLERK'S OFFICE  
DISTRICT COURT E.D. N.Y.

JAN 23 1974

**United States District Court**

FOR THE

**EASTERN DISTRICT OF NEW YORK**

TIME AM .....  
P.M. ....

United States of America

v.

**IP KEI WAI**

No. **73 CR 750**

M'FILE

On this **23rd** day of **January**, 19 **74** came the attorney for the government and the defendant appeared in person and with counsel

It Is ADJUDGED that the defendant upon his plea of ~~not guilty~~ a verdict of guilty

has been convicted of the offense of violating T-21, U.S.C.Secs. 841(a)(1) ; 846 952(a); 960(a)(1) and 963; T-18, U.S.C.Sec. 2, in that on or about and between July 1 and Aug. 3, 1973, both dates being approximate and inclusive, the defendant, with others, did knowingly and intentionally conspire to commit offenses against the U.S. in violation of Secs. 841(a)(1) and 952(a) of T-21, U.S.C. to knowingly and intentionally import into the U.S.A. from a point outside thereof and to possess with intent to distribute a quantity of heroin, a Schedule I narcotic drug controlled substance

as charged in counts 1, 2 & 3 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **6 years on each of counts 1, 2 & 3 pursuant to Sec. 4208(a)(2) of T-18, U.S.C.** Sentence to run concurrently also special parole term of 10 years on each of counts 1, 2 & 3 to run concurrently - ~~XXXXXX~~ An application to ~~release the defendant on bail was denied.~~ Defendant remanded.

It Is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to "

*Allen C. [Signature]*  
United States District Judge

Clerk.

## U.S. COURT OF APPEALS:SECOND CIRCUIT

Index No.

U.S.A.,

Appellee,

against

Affidavit of Personal Service

IP KEI WAI,

Appellant.

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega, being duly sworn,  
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York  
That on the 19th day of March 1974 at 225 Cadman Plaza, Brooklyn, N.Y.

deponent served the annexed *Appellants' Appendix* upon  
~~REX~~ U.S. Attorney for the Eastern District-Attorney for Appellee

the in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein,

Sworn to before me, this 19th  
day of March 19 74

*Victor Ortega*  
Print name beneath signature

VICTOR ORTEGA

*Robert T. Brin*  
ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 51 - 013050  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975



